

REMARKS/ARGUMENTS

Favorable reconsideration of this application as presently amended and in light of the following discussion is respectfully requested.

Claims 1-6, 8, 10-14 and 16 are presently active, Claims 7, 9, 15 and 17 have been previously canceled without prejudice, and Claims 1 and 11 are amended. No new matter is added.¹

In the outstanding Office Action, Claims 1-6, 8, 10-14 and 16 were rejected under 35 U.S.C. § 102(e) as anticipated by Aramata et al. (U.S. Pub. No. 2003/0215711). Claims 1-4, 8, 11-13 and 16 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting over Claims 1, 5, 9 and 14-15 in U.S. Patent Application No. 11/175,294.

Regarding the rejection under 35 U.S.C. § 102(e), Applicants respectfully submit that the rejection is overcome because, in Applicants' view, amended independent Claims 1 and 11 patentably distinguish over Aramata et al. as discussed below.

Claim 1 is amended to recite, *inter alia*, "a negative electrode containing a negative electrode active material including carbonaceous particles ***comprising graphite***, said carbonaceous particles each including silicon oxide phases dispersed therein, said silicon oxide phases each including an Si phase dispersed therein."

By providing the negative electrode active material including carbonaceous particles comprising graphite, it enables to enhance conductivity of the negative electrode active material.² The high conductivity of the negative electrode enhances large current discharging characteristics.

Instead, Aramata et al. describes that particles of the structure having silicon crystallites dispersed in a silicon compound and coated on their surfaces with carbon are used

¹ See, for example, the specification at page 28, line 18 through page 29, line 1.

² See, for example, the specification at page 10, lines 23-25.

as negative electrode active materials (Aramata et al. at paragraph 0037). Aramata et al. describes that the carbon coating is formed by chemical vapor deposition at a temperature of 1,400°C or lower (Aramata et al. at paragraph 0037-0040). Graphite is produced by subjecting carbon precursor to heat treatment at not lower than 2,500°C. In other words, the graphite is not formed by chemical vapor deposition at a temperature of 1,400°C or lower. Therefore, Aramata et al. does not teach or suggest using graphite as negative electrode active materials.

Thus, Aramata et al. fails to teach or suggest at least “a negative electrode containing a negative electrode active material including carbonaceous particles comprising graphite, said carbonaceous particles each including silicon oxide phases dispersed therein, said silicon oxide phases each including an Si phase dispersed therein,” as recited in Claim 1.

Likewise, Aramata et al. fails to teach or suggest at least “A negative electrode active material for nonaqueous electrolyte secondary battery, including carbonaceous particles comprising graphite, said carbonaceous particles each including silicon oxide phases dispersed therein, said silicon oxide phases each including an Si phase dispersed therein,” as recited in Claim 11.

Accordingly, independent Claims 1 and 11 patentably distinguish over Aramata et al. Therefore, Claims 1 and 11 and the pending Claims 2-6, 8, 10, 12-14 and 16 dependent from Claims 1 and 11 are believed to be allowable.

Finally, regarding the provisional double-patenting rejection, Applicants submit that a terminal disclaimer can be filed, if the claims in the present application and the claims in the co-pending Application No. 11/175,294 remain obvious in view of each other at the time of allowance of either of these applications. Indeed, M.P.E.P. § 804.02 IV states that, prior to issuance, it is necessary to disclaim each one of the double patenting references applied.

Hence, Applicants respectfully request that the examiner contact the undersigned should the present arguments be accepted and should the case be otherwise in a condition for allowance.

At that time, a terminal disclaimer can be supplied to expedite issuance of this case.

Consequently, in view of the present amendment and in light of the above discussions, it is believed that the outstanding rejection is overcome, and the application as amended herewith is believed to be in condition for formal allowance. An early and favorable action to that effect is respectfully requested.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.



Eckhard H. Kuesters
Attorney of Record
Registration No. 28,870

Customer Number
22850

Tel: (703) 413-3000
Fax: (703) 413 -2220
(OSMMN 06/04)

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